

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 04-06**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Whether the Taxpayer's copy machines qualify for the industrial machinery sales tax exemption?

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] offers the services of commercial reprographic centers to its customers. The Taxpayer operates a commercial reprographics center at its own facility or at its customer's facility. At a commercial reprographic center the Taxpayer makes copies of original documents submitted by customers and provides related copy services such as binding, stapling and numbering.

The Taxpayer provides personnel, supplies, and equipment required to produce copies. The copy centers are available to the Taxpayer's customers only during certain hours of the day and only the Taxpayer's personnel operate the equipment and various control functions of the centers. There are no lease agreements between the Taxpayer and its customers.

The Taxpayer's customers are charged a base amount that allows them to make a certain number of copies. An additional charge is made for each copy over the allotted amount.

It is the Taxpayer's responsibility to maintain the copiers and provide the toner, developer and fuser. The Taxpayer may, or may not, provide paper depending on the terms of service to the particular client involved.

QUESTION PRESENTED

Do the Taxpayer's copy machines qualify for the industrial machinery sales tax exemption?

RULING

Yes.

ANALYSIS

T.C.A. § 67-6-206(a) creates a sales tax exemption for the purchase of industrial machinery by stating that “. . . no tax is due with respect to industrial machinery.”

“Industrial machinery” is defined by T.C.A. § 67-6-102(a)(14)(C) to include:

Machinery utilized in the pre-press and press operations in the business of printing, including plates and cylinders and including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery, plates and cylinders, regardless of whether or not the operations occur at the point of retail sales.

The Department of Revenue has promulgated Tenn. Comp. R. & Regs. 1320-5-1-.67 which makes the following provisions:

- (1) Sales of advertising circulars, books, forms, tickets, and other like printed items of tangible personal property are subject to the sales and use tax unless the printed matter is sold for resale purposes. The sales or use tax is based upon the selling price, without any deductions therefrom, except the value of the postage included on printed envelopes furnished to customers.
- (2) The printing and binding of paper, books, forms, letters, and the like is a fabrication thereof, and is subject to the sales or use tax unless the fabrication is a part of a manufacturing process for resale. It is immaterial whether the customer furnishes any or all of the paper or other materials used in the fabrication work. Any rebinding or other repair of a book or other tangible personal property is subject to the sales or use tax.
- (3) Any equipment, materials and supplies which are not sold to a customer, or which do not become a component part of the printed matter being fabricated for sale, or which cannot qualify as an industrial supply exempt from tax, are subject to the sales or use tax.

In those cases where a printer makes a specific charge in a contract, or indicates a specific charge on an invoice for an engraving, die, plate, or any other similar kind of tangible personal property sold to a customer, and uses the property in the printing process, he shall be liable for the tax represented by such sale or use irrespective of whether the customer ever actually obtains possession of the engraving, die plate, etc., or whether the printed matter itself is subject to the sales or use tax.

The Taxpayer in this instance is operating a copy center that is copying original documents submitted by customers and providing other related services. The Taxpayer provides personnel, supplies, and equipment required to produce copies and the copy centers are available to customers only for certain hours of the day. Only the Taxpayer's personnel operate the equipment and various control functions. There are no lease agreements.

Tenn. Comp. R. & Regs. 1320-5-1-.67(2) states that the printing, and binding of paper, books, forms, letters and the like is a fabrication thereof and is subject to Tennessee sales and use tax. By making copies and providing related services, such as binding, stapling and numbering the copies made, the Taxpayer is fabricating tangible personal property and the Tennessee sales and use tax applies.

By making copies, the Taxpayer is engaged in the business of printing. T.C.A. § 67-6-102(a)(14)(C) states that machinery utilized in the pre-press and press operations in the business of printing, including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery qualifies as industrial machinery regardless of whether or not the operations occur at the point of retail sales.

Accordingly, the Taxpayer's copy machines and any component parts and fluids or chemicals used in the operation of such machines may be purchased exempt from Tennessee sales or use tax pursuant to T.C.A. 67-6-206(a).

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APPROVED: Loren L. Chumley, Commissioner

DATE: 1/31/04